

# Human Trafficking Policy and Legislation: Adequate Protections and North Carolina Solutions

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Every day someone globally, nationally, and locally is affected by human trafficking.<sup>1</sup> Human trafficking or modern day slavery is forced labor involving the exploitation and coercion of others.<sup>2</sup> It is a horrendous practice that is criminalized in most countries and states in the United States.<sup>3</sup> The second most profitable industry after drug trafficking, there is an estimated 20.9 to 27 million victims globally.<sup>4</sup> Human trafficking affects both men and women, but with women representing between 75 to 80 percent of all trafficked people<sup>5</sup>, it is an issue that is pertinent when discussing violence against women. Touching almost every continent, state, and county in North Carolina, a major question becomes what can be done to stop this practice? How can we ensure that victims are protected and perpetrators are deterred? One answer to these questions is creating strong legislation that provides adequate protections for victims and real penalties for perpetrators. In 2007, the North Carolina legislature passed a bill criminalizing all forms of human trafficking in the state.<sup>6</sup> The North Carolina statute provides clear definitions, true penalties, and ensures services for all victims.<sup>7</sup> While there is room improvement in statute, North Carolina's legislation provides a great foundation and starting point to combatting human trafficking in the legislature.

Human trafficking impacts the entire international community. This paper argues that strengthening legislation and policy in all levels of government while providing adequate services for victims can help eradicate human trafficking and this form of violence against

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<sup>1</sup> Jaclyn Murphy, *Super Bowl Renews Efforts to Thwart Human Trafficking*, CAMPBELL LAW OBSERVER (Feb. 14, 2013), <http://campbelllawobserver.com/2013/02/super-bowl-renews-efforts-to-thwart-human-trafficking/>.

<sup>2</sup> Polaris Project, *Human Trafficking Overview*, POLARISPROJECT.ORG., <http://www.polarisproject.org/human-trafficking/overview> (last visited March 1, 2013).

<sup>3</sup> Global Freedom Center, *Quick Facts*, GLOBAL FREEDOM CENTER.ORG, <http://globalfreedomcenter.org/GFC/learn/quick-facts> (last visited March 1, 2013). 128 nations out of the 196 nations criminalize human trafficking. *Id.*

<sup>4</sup>*Id.*

<sup>5</sup> *Women and girls make up 75% of all trafficked people*, UN WIRE (Feb. 13, 2013); U.S. Department of State, *The Link Between Prostitution and Sex Trafficking*, GLOBAL AFFAIRS (Nov. 2, 2014), available at <http://2001-2009.state.gov/documents/organization/38901.pdf>.

<sup>6</sup> S. 1079, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007) (enacted).

<sup>7</sup> N.C.G.S. § 14.43-10 - §14.43-14

women. Part I gives an overview of human trafficking and how this practice affects women globally, in the United States, and in North Carolina. Part II explores legislative solutions to this issue focusing on international, national, and local approaches. Part IV profiles a successful North Carolina model for assisting victims, and Part V argues that a strong legislation like that of North Carolina is a positive step in combatting human trafficking.

## **I. Human Trafficking and Women: A Global Problem**

Human trafficking is the forced and often coerced labor of individuals worldwide.<sup>8</sup> It often involves a transnational element, where individuals are transported from nation to nation.<sup>9</sup> However, it need not involve movement.<sup>10</sup> It can happen in one's own country, state, and neighborhood.<sup>11</sup> Human trafficking is an umbrella term and includes all forms forced labor involving the exploitation and coercion of individuals. The term includes sex trafficking, forced labor or involuntary servitude, debt bondage, and child soldiers. The Trafficking Victims Protection Act (TVPA 2000) distinguishes between sex trafficking and labor trafficking. According to the TVPA, sex trafficking means "the recruitment, harboring transportation, provision, or obtaining of a person for the purpose of a commercial sex act."<sup>12</sup> Labor trafficking is a form of severe trafficking and is "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."<sup>13</sup>

### **A. Human Trafficking and Women: An International Look**

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<sup>8</sup> Polaris Project, *supra* note 2.

<sup>9</sup> Trafficking Victims Protection Act, 22 U.S.C. § 7102 -§7112 (2000).

<sup>10</sup> Global Freedom Center, *supra* note 3 (ADD parenthetical)

<sup>11</sup> *Id.*

<sup>12</sup> 22 U.S.C. § 7102.

<sup>13</sup> *Id.*

Human trafficking plagues both women and men. However, it is particularly relevant and important in a discussion concerning violence against women, because it often affects women disproportionately to men. For example, the U.S. Department of State estimates that 80 percent of all human trafficking victims are women.<sup>14</sup> According to the International Labour Organization, women and girls comprise 98 percent of all those in sex trafficking and 55 percent of all those in forced labor.<sup>15</sup> Men and boys comprise 2 percent of those in sex trafficking and 45 percent of those in forced labor.<sup>16</sup> Thus, while both men and women must be considered when thinking about human trafficking, the unequal numbers make human trafficking extremely important when considering violence against women.

As a major form of trafficking affecting women, sex trafficking is relevant and critical in a discussion on violence against women. Sex trafficking occurs in many different ways and affects women of all ages.<sup>17</sup> From young girls in South Africa to young adult females in the United States, sex trafficking poses a real problem for women.<sup>18</sup> The nature of human trafficking often includes coercion and exploitation which is amplified by sex trafficking.<sup>19</sup> Women and girls who are often lured by promises of work and subsistence for their families are threatened, beaten, and abused by their traffickers.<sup>20</sup> They are forced to work in brothels and work as prostitutes.<sup>21</sup> A too common story involves a young girl who leaves home in search of work, but

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<sup>14</sup> *Sex Trafficking Fact Sheet*, INTERNATIONAL JUSTICE MISSION, <http://www.ijm.org/sites/default/files/resources/Factsheet-Sex-Trafficking.pdf> (last visited Mar. 1, 2013); U.S. Department of State, *The Link Between Prostitution and Sex Trafficking*, GLOBAL AFFAIRS (Nov. 2, 2014), available at <http://2001-2009.state.gov/documents/organization/38901.pdf>.

<sup>15</sup> *ILO Global Estimate of Forced Labor: Results and Methodology*, INTERNATIONAL LABOUR ORGANIZATION (2012), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> *Sex Trafficking Fact Sheet*, *supra* note 14.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Sex Trafficking Fact Sheet*, *supra* note 14.

<sup>21</sup> *Id.*

is instead trafficked by someone with a false promise.<sup>22</sup> The story of Sindiswa is very similar to this too common scenario.<sup>23</sup> As a young girl in South Africa, she left home after her parents passed away due to AIDs.<sup>24</sup> Looking for work, she and a friend met a woman in a neighboring village who promised to help them find employment.<sup>25</sup> After traveling with the women, she was taken to and left at the home a man.<sup>26</sup> She was forced to be a prostitute and make a certain amount of money every night.<sup>27</sup> If she didn't make that amount or if she refused, she was beaten.<sup>28</sup> Eventually found by a local pastor, she was able to escape but had unfortunately contracted AIDs.<sup>29</sup> Sex trafficking is real for women and young girls globally who are violently abused and threatened daily.

Labor trafficking also poses a real problem for women of all ages. Forced labor includes many forms from work in fisheries in Cambodia to domestic labor in the United Kingdom.<sup>30</sup> Like sex trafficking, forced labor includes coercion and often violent force to exploit individuals for free or reduced pay.<sup>31</sup> A common form of forced labor that affects women is domestic servitude. Often woman will travel to other countries to work as maids or caregivers with the hope of sending money to their families.<sup>32</sup> However, they often receive no pay for their work, are forbidden from leaving, forced to work all day without breaks, and are physically threatened or beaten if they refuse or speak up.<sup>33</sup> In 2011, 85 women from Madagascar were rescued by their

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<sup>22</sup> *Id.*

<sup>23</sup> Benjamin Skinner, *South Africa's New Slave Trade and the Campaign to Stop It*, TIME MAGAZINE (Jan 18, 2010), <http://www.time.com/time/magazine/article/0,9171,1952335,00.html>.

<sup>24</sup> *See id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* To read more about Sindiswa *see id.*

<sup>30</sup> Free the Slaves, Global Freedom Center, *supra* note 3.

<sup>31</sup> Global Freedom Center, *supra* note 3.

<sup>32</sup> Hannah McNeish, *Madagascar maids : Misery in the Middle East*, BBC NEWS AFRICA (Aug. 19, 2011), <http://www.bbc.co.uk/news/world-africa-14507719>.

<sup>33</sup> *Id.*

government when it was discovered that they were being forced to work as maids in the houses of wealthy Lebanese residents.<sup>34</sup> Domestic servitude often results in violence when women try to escape or speak out.<sup>35</sup>

Other forms of forced labor include bonded labor, situations involving child soldiers, and forced work in mines, fisheries, restaurants, and farms. Bonded labor in particular can affect women and their families. Commonly found in South Asian brick farms, bonded labor occurs when individuals or families are advanced or forwarded money.<sup>36</sup> In exchange for the money, the family or individual must work off their debt.<sup>37</sup> However, it is very rare that an individual will work off the debt and it passed on to his or her family, who will also rarely work off the debt.<sup>38</sup> Instead they are kept in bondage, forced to work in fear of being beaten.<sup>39</sup> Like domestic servitude, women involved in this form of trafficking are subjected to violence in the form of physical abuse.<sup>40</sup> Young girls forced fight and work as child soldiers often are victims of violence.<sup>41</sup> Often forced to injure and kill family members, these girls are subjected to mental pain and anguish.<sup>42</sup> Moreover, these young girls are victims of sexual violence and physical abuse.<sup>43</sup> Forced labor is important to address when working to eliminate violence against women.

## **B. Human Trafficking in the United States**

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Office of Refugee Resettlement, *Fact Sheet: Labor Trafficking*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Aug. 6, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-labor-trafficking-english>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Global Freedom Center, *supra* note 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

Human trafficking affects all areas of the world, including the United States. Trafficking of both U.S. citizens and foreign nationals plague the United States. According to the Polaris Project, there are between 100,000-300,000 children prostituted and affected by sex trafficking in the United States.<sup>44</sup> The average age of entry for young American girls into sex trafficking is between 12 and 14 years old.<sup>45</sup> Moreover, many of these young girls have often runaway, escaping sexual abuse suffered as children.<sup>46</sup> In the United States, a familiar story begins with a young girl who runs away from home or whose parents are unable to take care of her.<sup>47</sup> She is shuffled through the system, from foster home to foster home and eventually decides to run away.<sup>48</sup> She is approached by a man or someone who promises employment and enough money to get her back on her feet.<sup>49</sup> The next day she is dropped on a busy street corner late at night, she is told to bring back a certain amount of money or she would be beaten.<sup>50</sup> Sex trafficking is a reality in the United States.

Labor trafficking also affects women in the United States. Currently, there are not many statistics widely available for U.S. citizens affected by laboring trafficking. In terms of foreign nationals, the United States is also a hub for traffickers with the major countries of origin in 2011 being Mexico, Philippines, Thailand, Guatemala, Honduras, and India.<sup>51</sup> From fiscal year 2002 to fiscal year 2010, there was 2,078 T-Visas, visas for immigrant victims of severe forms of

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<sup>44</sup> Polaris Project, *Human Trafficking Statistics*, available at <http://www.cicatelli.org/titlex/downloadable/Human%20Trafficking%20Statistics.pdf> (last visited Mar. 2, 2013).

<sup>45</sup> *Id.*

<sup>46</sup> *What is Human Trafficking?*, CALIFORNIANS AGAINST SEXUAL EXPLOITATION, <http://www.caseact.org/learn/humantrafficking/> (last visited Mar. 2, 2013).

<sup>47</sup> Yamiche Alcindor, *Sex Trafficking in the USA hits close to home*, USA Today (Sept. 27, 2012) <http://usatoday30.usatoday.com/news/nation/story/2012/09/26/human-trafficking-in-the-united-states-finds-a-home-in-the-schoolyard/57846054/1>; *South Florida Human Trafficking Victim Shares Her Story*, CBS MIAMI (Aug. 17, 2011), <http://miami.cbslocal.com/2011/08/17/south-florida-human-trafficking-victims-shares-her-story/>.

<sup>48</sup> Yamiche Alcindor, *supra* note 47.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> U.S. Department of State, *2012 Trafficking In Persons Report*, U.S. DEPARTMENT OF STATE, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/>.

trafficking, granted.<sup>52</sup> Forced labor in the form of domestic servitude is also found in the United States and women work as maids and caregivers. In 2012, in a small suburb outside of New York City, a couple was charged with trafficking an Indian native in their home.<sup>53</sup> The woman was forced to clean, cook, and be a caregiver for the family while receiving no compensation and being restricted from leaving the residence.<sup>54</sup> Forced labor is also a reality affecting women in the United States.

The United States has started to make human trafficking a major focus, a goal and initiative highlighted by President Barack Obama in 2012.<sup>55</sup> In March 2012, President Obama announced efforts to redouble the Administration's anti-trafficking efforts.<sup>56</sup> In September 2012, President Obama stated that "our fight against human trafficking is one of the great human rights causes of our time, and the United States will continue to lead it."<sup>57</sup> He has issued an executive order that strengthens protections in federal contracts, helped develop tools and trainings to identify and assist victims, working to create more resources for victims, and support the President's Interagency Task Force to Monitor and Combat Human Trafficking in Persons to assist victims and develop strategies for the future.<sup>58</sup> Along with the President, there have been increased action and involvement at the agency level with the Department of State, Department of Justice, Department of Homeland Security, Department of Health and Human Services, U.S.

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<sup>52</sup> Polaris Project, *Human Trafficking Statistics*, available at <http://www.cicatelli.org/titex/downloadable/Human%20Trafficking%20Statistics.pdf> (last visited Mar. 2, 2013).

<sup>53</sup> Nikhla Gill and Heather Timmons, *Indian Couple Deny Charges of Abusing Servant*, THE NEW YORK TIMES (April 5, 2012), <http://www.nytimes.com/2012/04/06/world/asia/indian-couple-deny-charges-of-abusing-teenage-maid.html>.

<sup>54</sup> *Id.*

<sup>55</sup> *Fact Sheet: the Obama Administration Announces Efforts to Combat Human Trafficking at Home and Abroad*, THE WHITE HOUSE (Sept 25, 2011), <http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



Agency for International Development, and the Federal Bureau of Investigation all having anti-trafficking programs.<sup>59</sup>

### C. Human Trafficking in North Carolina

Human trafficking touches all areas and places, including North Carolina. In North Carolina, human trafficking exists in various forms including forced labor and sex trafficking. Number 8 on the Federal Watch List, North Carolina is a major hub for human trafficking.<sup>60</sup> This means that North Carolina is the 8<sup>th</sup> most likely state in the United States for trafficking to occur.<sup>61</sup> North Carolina's major highways, large number of military bases, coastal ports and cities, and large transient workforce contribute to its placement on the watch list.<sup>62</sup> According to the Polaris Project, North Carolina has been the tenth highest state in terms of volume of calls received on the National Human Trafficking Resource Center.<sup>63</sup> From January through September 2012, the Hotline received about 361 calls from North Carolina.<sup>64</sup> The calls included general information requests and community member tips.<sup>65</sup> Human trafficking is a real and major issue in North Carolina.

North Carolina's major interstate systems contribute to human trafficking in the state. Both Interstate 85 and Interstate 95 run through North Carolina and together these two highways

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<sup>59</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, <http://www.state.gov/j/tip/>; U.S. Department of Justice, Human Trafficking Prosecution Unit, <http://www.justice.gov/crt/about/crm/htpu.php>; U.S. Department of Health and Human Services, Anti-Trafficking in Persons, <http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking/>; , Federal Bureau of Investigation ,Human Trafficking, [http://www.fbi.gov/about-us/investigate/civilrights/human\\_trafficking/](http://www.fbi.gov/about-us/investigate/civilrights/human_trafficking/); U.S. Department of Homeland Security, Blue Campaign, <http://www.dhs.gov/topic/human-trafficking>.

<sup>60</sup> Summit Anti-Human Trafficking, *About Human Trafficking*, THE SUMMIT CHURCH, <http://www.summitrdu.com/aht/> (last visited Mar. 2, 2013).

<sup>61</sup> Kevin Maurer, *StarNews: Goolsby files bill to combat trafficking in N.C.*, STARNEWSONLINE (Feb. 20, 2013), <http://www.wwaytv3.com/2013/02/20/starnews-goolsby-files-bill-to-combat-sex-trafficking-nc>.

<sup>62</sup> *Id.*

<sup>63</sup> Kelly Corbett and Michelle Saxton, *N.C. Lawmakers, DA Target Sex Traffickers*, LUMNIA NEWS (Feb. 27, 2013), <http://www.luminanews.com/article.asp?aid=11623&iid=367&sud=30>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

span most of the east coast.<sup>66</sup> In January 2013, a two year federal investigation uncovered a sex trafficking and prostitution ring from Naples, Florida to North Carolina.<sup>67</sup> The investigation yielded 13 arrests, allegations of transporting and harboring women in and in between the two states, and the rescue of up to 11 women.<sup>68</sup> North Carolina's major highway systems are one contributing factor to this sex trafficking ring. Another recent case involved a 20 year high school student who was involved in an inter-state sex trafficking ring.<sup>69</sup> The student helped set up make-shift brothels in Wilmington and Winston-Salem.<sup>70</sup>

North Carolina is also home to 17 military bases and offices which attract sex traffickers.<sup>71</sup> Often these military towns contain brothels and other venues for sex trafficking aiming to attract members of the military.<sup>72</sup> Moreover, North Carolina has a large agricultural industry that relies mostly on migrant labor.<sup>73</sup> As human traffickers often target those who are marginalized by society and are unable to stand against oppression, immigrant workers who make up a large part of the agriculture sector are targeted.<sup>74</sup> Traffickers impose harsh working

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<sup>66</sup> *Federal Highway Administration Route Log and Finder List*, U.S. DEPARTMENT OF TRANSPORTATION (Oct. 31, 2002), <http://www.fhwa.dot.gov/reports/routefinder/table1.cfm>. Interstate 85 runs through Alabama, Georgia, South Carolina, North Carolina, and Virginia. *Id.* It serves 22 cities with populations greater than 5,000 people. *Id.* Interstate 95 serves Florida, Georgia, South Carolina, North Carolina, Virginia, Washington D.C., Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine. *Id.* It covers more than 60 cities with populations greater than 5,000. *Id.*

<sup>67</sup> Victoria Macchi, *Fed Make 13 arrests in Naples, Florida –to-North Carolina sex trafficking ring*, ABC ACTION NEWS (Jan. 18, 2013), <http://www.abcactionnews.com/dpp/news/state/feds-make-13-arrests-in-naples-florida-to-north-carolina-sex-trafficking-ring>.

<sup>68</sup> *Id.*

<sup>69</sup> Kevin Maurer, *StarNews: Goolsby files bill to combat trafficking in N.C.*, STARNEWSONLINE (Feb. 20, 2013), <http://www.wwaytv3.com/2013/02/20/starnews-goolsby-files-bill-to-combat-sex-trafficking-nc>.

<sup>70</sup> *Id.*

<sup>71</sup> *NC Military Bases*, UNITED SERVICE ORGANIZATIONS OF NORTH CAROLINA, <http://uso-nc.org/other-resources/nc-military-bases/> (last visited Feb. 28, 2013).

<sup>72</sup> *NC prime destination for human trafficking?*, ABC LOCAL NEWS WTVD-TV (Nov. 18, 2009), <http://abclocal.go.com/wtvd/story?section=news/local&id=7124225>.

<sup>73</sup> Jennie Wilburn, *January is Human Trafficking Awareness Month*, North Carolina Farm Works Advocacy Network Blog (Jan. 14, 2013), [http://www.ncfan.org/blog/2013/1/14/january-is-human-trafficking-awareness-month.html#.US\\_61zBJPLk](http://www.ncfan.org/blog/2013/1/14/january-is-human-trafficking-awareness-month.html#.US_61zBJPLk).

<sup>74</sup> *Id.*

conditions including long working hours, low wages, and exposure to unsafe pesticides.<sup>75</sup> They coerce individuals into working by making them believe they have no other option.<sup>76</sup> Individuals often are threatened with deportation, isolated from their families, have their movement controlled, and are physically and sometimes sexually abused.<sup>77</sup>

North Carolina's coastal region also attracts traffickers. As a region that consistently brings in tourists, the coastal areas are targeted by traffickers. Moreover, North Carolina's ports make the state a great location for transporting individuals into the state and in some cases into the country. In the 2011-2012 fiscal year, the Rape Crisis Center of Coastal Horizons Center, Inc. served 13 victims of human trafficking.<sup>78</sup> So far, the Center has served 12 victims of human trafficking in the 2012-2013 fiscal year.<sup>79</sup> These coastal areas of North Carolina are affecting by human trafficking.

## **II. Legislative Solutions to Human Trafficking**

Human trafficking is an issue globally, nationally, and locally. As the numbers of those trafficked increases, nations and states must create adequate solutions to stop perpetrators and aid victims. Many countries and U.S. states like North Carolina provide useful and innovative legislative solutions. While legislative solutions are not the only answer to combatting human trafficking, adequate laws help deter traffickers, punish perpetrators, and ensure that survivors receive needed services. The legislative models of Sweden, the United States, and North Carolina provide innovative and effective solutions to the issue. In particular, North Carolina provides a great starting framework for states and nations building anti-trafficking legislation.

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Kelly Corbett and Michelle Saxton, *N.C. Lawmakers, DA Target Sex Traffickers*, LUMNIA NEWS (Feb. 27, 2013), <http://www.luminanews.com/article.asp?aid=11623&iid=367&sud=30>.

<sup>79</sup> *Id.*

## A. International Legislative Solutions: Sweden

Human trafficking affects and impacts the entire global community. With 27 million individuals in modern day slavery around the world, many nations are working to find solutions to this global epidemic.<sup>80</sup> Currently, 161 countries of the 196 total nations are affected by human trafficking.<sup>81</sup> Many countries are working to eliminate human trafficking with 128 nations enacting legislation criminalizing all forms of trafficking.<sup>82</sup> In 2011, 42,291 human trafficking victims were identified and 3,969 trafficking cases were successfully prosecuted.<sup>83</sup> As the world continues to become interconnected and interdependent, it is important that all nations have effective and strong legislation.

Sweden's anti-trafficking and prostitution legislation has become a model in combatting human trafficking, in particular sex trafficking. In 1995, Sweden entered into legislation reform, changing the focus of its prostitution statutes.<sup>84</sup> In 1999, Sweden passed a law that criminalized the purchase of sex.<sup>85</sup> This was a significant change and instead of focusing on the idea of selling sex, it focused on the act of buying sex and purchaser.<sup>86</sup> For women and men that are victims of sex trafficking, this legislation is beneficial because it ensures that traffickers and those who use the services of traffickers are punished.<sup>87</sup> Moreover, those forced into sex trafficking will not be criminally punished and further victimized.<sup>88</sup> In Sweden, those caught buying sex must pay hefty

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<sup>80</sup> Global Freedom Center, *supra* note 3.

<sup>81</sup> CNN Freedom Project, *The Battle Against Sex Trafficking: Sweden vs. Denmark*, CNN FREEDOM PROJECT BLOG (Mar. 30, 2011), <http://thecnnfreedomproject.blogs.cnn.com/2011/03/30/sex-trafficking-countries-take-different-approaches-to-same-problem/>.

<sup>82</sup> Global Freedom Center, *supra* note 3.

<sup>83</sup> *Id.*

<sup>84</sup> CNN Freedom Project, *supra* note 81.

<sup>85</sup> European Commission, *Together Against Trafficking: Sweden*, EUROPEAN COMMISSION, <http://ec.europa.eu/anti-trafficking/showNIPsection.action;jsessionid=tZmTPbGGqSvs4VtCqjvB9mSXP3yjgfM2FPJ0qPVCT7kskrL7FNdt!-637572467?country=Sweden> (last updated Jan. 11, 2013).

<sup>86</sup> CNN Freedom Project, *supra* note 81.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

finer, be placed on a public police notification, and have the potential to serve up to four years in prison.<sup>89</sup>

While to date, no one has served a sentence under the legislation, Swedish culture has changed and reflected an attitude against selling and buying sex.<sup>90</sup> With more than 70 percent of Swedish citizens supporting the law and even the existence of slang term for those who buy sex, Sweden has changed the culture and helped curb the sex trafficking industry in its country.<sup>91</sup> Human trafficking still exists in Sweden, but street prostitution as form of sex trafficking has declined dramatically since the law was enacted.

In 2004, Sweden passed an addition to its Penal Code, criminalizing all forms of trafficking.<sup>92</sup> In 2008, Sweden adopted its first National Action Plan dealing with the trafficking of both children and adults.<sup>93</sup> Together with its 1999 criminal law focusing on sex trafficking, Sweden has created and is continuing to provide effective tools to combatting human trafficking. In 2011, two individuals were convicted of human trafficking for sexual persons, about sixteen individuals were convicted for procuring or aggravating that was in the nature of human trafficking, and one person was convicted of aiding procuring that was in the nature of human trafficking.<sup>94</sup>

### **B. The Trafficking Victims Protection Act: The United States' Response**

The United States has worked to develop federal legislation to criminalize human trafficking and provide aid for all victims, U.S. citizens and foreign nationals. One important piece of legislation is the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA made human

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> European Commission, *supra* note 85.

<sup>93</sup> *Id.*

<sup>94</sup> *See id.*

trafficking a federal crime with severe penalties. For example, a person found guilty of involuntary servitude can be forced to pay a fine or be imprisoned for up to 20 years. The TVPA created several human trafficking related offenses including peonage or debt servitude; involuntary servitude; forced labor; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; sex trafficking of children or by force, fraud, or coercion; and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor. It created real crimes and real penalties for perpetrators.

The TVPA was a great step for the United States because it brought human trafficking into the public consciousness. It created the Office to Monitor and Combat Trafficking in the Department of State, developed a public awareness and informational program, and created a federal task force to implement the TVPA.<sup>95</sup> Moreover the TVPA developed protection and assistance options for victims.<sup>96</sup> It established the T-Visa, a visa for victims of human trafficking.<sup>97</sup> The visa allows these individuals to become temporary residents of the United States and to become eligible for permanent residency after three years.<sup>98</sup> It also created a temporary legal status known as Continued Presence that allows law enforcement to certify victims with their assistance is needed. It makes the individual eligible for federal benefits similar to those of refugees.<sup>99</sup>

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<sup>95</sup> 22 U.S.C. § 7103 (2000).

<sup>96</sup> 22 U.S.C. § 7105.

<sup>97</sup> 22 U.S.C. § 7105

<sup>98</sup> *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=02ed3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD> (last updated Oct. 03, 2011).

<sup>99</sup> 22 U.S.C. § 7105(c)(3).

The TVPA has been reauthorized four times in the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, 2008, and 2013.<sup>100</sup> Each TVPRA provided key provisions to strengthen human trafficking legislation, services for victim, and protections for U.S. citizen victims.<sup>101</sup> For example, the TVPRA of 2003 created a federal civil cause of action, allowing trafficking victims to sue their traffickers.<sup>102</sup> The TVPRA of 2008 increased immigration related relief by increasing protections related to T-Visas, U-Visas, and Continued Presence.<sup>103</sup> Moreover, the TVPRA of 2008 authorized a new program for U.S. citizen survivors of human trafficking.<sup>104</sup> Most recently the TVPRA of 2013 was passed through an amendment to the Violence Against Women’s Act (VAWA) in both the Senate and House Representatives.<sup>105</sup> The TVPA has made a real impact in supporting services and providing options of relief for victims.

### C. North Carolina and Human Trafficking Legislation

North Carolina’s human trafficking legislation is codified in the North Carolina General Statutes §14.43-10 to §14.43-14.<sup>106</sup> It criminalizes the acts of human trafficking, involuntary servitude, and sexual servitude.<sup>107</sup> Moreover, it provides clear definitions of each crime, specific penalties, and works to provide remedies for victims. According the Polaris Project, North Carolina is amongst 21 states in the top tier of a recent study showing that the state “had passed

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<sup>100</sup> *U.S. Laws of Trafficking in Persons*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/j/tip/laws/> (last visited Mar. 2, 2013); Annick Fabrey, *The TVPRA Passes the House of Representatives!*, INTERNATIONAL JUSTICE MISSION THE FREEDOM COMMONS BLOG (FEB. 28, 2013), <http://freedomcommons.ijm.org/news/national/tvpra-passes-house-representatives>.

<sup>101</sup> Polaris Project, *Trafficking Victims’ Protection Act (TVPA) – Fact Sheet*, POLARIS PROJECT, available at <http://www.polarisproject.org/resources/resources-by-topic/anti-trafficking-efforts> (last visited Mar. 2, 2013).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Annick Fabrey, *supra* note 99.

<sup>106</sup> N.C.G.S. § 14.43-10 - §14.43-14

<sup>107</sup> *Id.*

significant laws to fight human trafficking and should continue to improve laws.<sup>108</sup> While there is room for improvement in the NC statute, its language, true penalties, and written provisions for victims is a positive in the right direction.

Clear definitions and meanings are one important feature of effective human trafficking legislation. While there is sometimes confusion about whether human trafficking must involve movement or transporting an individual, a clear statute helps define a crime and avoid misunderstanding. In the North Carolina statute, a person has committed the offense of human trafficking “when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.”<sup>109</sup> The language makes it clear that human trafficking may involve transport, but it can also involve harboring or remaining in the same location. The statute defines involuntary servitude as “the performance of labor, whether or not for compensation, or whether or not for satisfaction of a debt” that is “by deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.”<sup>110</sup> This definition is thorough including bonded labor or forced labor in satisfaction of a debt. Sexual Servitude is defined as any sexual activity:

- a. Any sexual activity as defined in G.S. 14-190.13 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or

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<sup>108</sup> Polaris Project, *2012 State Ratings Map*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/current-laws> (last visited Mar. 2, 2013).

<sup>109</sup> *Id.* at §14-43.11

<sup>110</sup> *Id.* at §14-43.10(a)(3).



deception or which conduct is induced or obtained from a person under the age of 18 years. (2006-247, s. 20(b).)<sup>111</sup>

The language in this definition notes that sexual servitude or trafficking can involve but does not involve forced prostitution. In general, the NC statute provides clear definitions that lead to little confusion when defining human trafficking.

True and strong criminal penalties are other beneficial elements of the North Carolina Statute. Committing an offense of human trafficking, involuntary servitude, or sexual servitude yields a Class F felony if the victim is an adult and a Class C felony if the victim is a minor, or person under the age 18.<sup>112</sup> In North Carolina, being found guilty of a C felony automatically requires an active imprisonment for an offender even if they had no prior record.<sup>113</sup> While the sentence will vary based on things such as a prior record, aggravating and mitigating factors, a person will at least serve 44 months in prison for these offenses.<sup>114</sup> If the person has a prior record with more than 18 points, they can serve a maximum of 182 months when aggravating factors are present.<sup>115</sup> The statute ensures that individuals will go to prison if found guilty of these offenses involving a minor. Class F offenses at the minimum required a 10 month active sentence and at its maximum requires 41 months with a prior record level of 18 points and aggravating factors present.<sup>116</sup> Someone with no prior record level or a low prior record level could be given intermediate probation which is always a form of supervised probation in North

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<sup>111</sup> *Id.* at §14-43.10(a)(5).

<sup>112</sup> *Id.* at §14-43.11-§14-43.13.

<sup>113</sup> North Carolina Felony Punishment Chart, available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/FelonyChart\\_12\\_01\\_11MaxChart.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/FelonyChart_12_01_11MaxChart.pdf).

<sup>114</sup> *Id.* North Carolina follows a structured sentencing model for its criminal offenses. Disposition types, which include active prison sentences, intermediate probation, and community probation, are determined by the offense class and prior record level. The felony punishment chart which is used in North Carolina courtrooms lists the available disposition types and required time frames for each offense class and prior record level. For more information *see* Felony Punishment Chart, *supra* note 113.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

Carolina.<sup>117</sup> While trafficking and involuntary servitude of adults is a horrible practice which some may think should always lead to imprisonment, the possibility of imprisonment and the knowledge that some type of punishment such as supervised probation is a deterrent and improvement from the past. North Carolina's criminal penalties are real, built into the statute, and someone found guilty of these offenses will have to either automatically serve prison time or be on supervised probation. While some of the penalties could be stronger, North Carolina's legislation is a step in the right direction in deterring perpetrators.

Another beneficial element of the North Carolina statute is its built in protections and aftercare for victims of human trafficking that are not North Carolina residents.<sup>118</sup> Many victims of human trafficking in North Carolina, the United States, and globally are immigrants. It is essential that State public benefits are available to all victims and North Carolina ensures this in the statute:

A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law.<sup>119</sup>

The North Carolina statute ensures that all victims of human trafficking are eligible for State benefits and resources, even if they are not North Carolina residents.

#### **D. Improvements to North Carolina's Statute**

The North Carolina statute has many benefits and is good step in the right direction for human trafficking in the state. While there are great aspects about the statute, there are also areas

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<sup>117</sup> *Id.*; see also James M. Markham, *The North Carolina Justice Reinvestment Act* (2012).

<sup>118</sup> §14-43.11(d).

<sup>119</sup> *Id.*

for improvement. One of these areas is the intent required for the offense of human trafficking. According to the statute, an individual commits the offense of human trafficking “when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the *intent* that the other person be held in involuntary servitude or sexual servitude.”<sup>120</sup> While the statute is clear on what is required, it is often hard to prove intent.<sup>121</sup> Showing that an individual knew that he or she was harboring individuals may be an easier burden especially when there is direct evidence such as videos, photographs, or direct testimony. On the contrary, showing that an individual had the intent that a person be held in servitude is a more difficult burden especially if the defendant does not admit the intent and there is not much circumstantial evidence. Removing this intent requirement may make the North Carolina statute stronger and more effective.

Another area for improvement is stronger penalties for adult victims. As noted, conviction of most of the offenses listed in the statute could yield either active prison time or supervised probation. These penalties are greater when the victim is a child. For example, an individual with no prior record level who is found guilty of human trafficking a minor could serve a maximum of 8 years in prison.<sup>122</sup> The same person found guilty of the identical crime involving an adult could only receive a little less than 2 years in prison.<sup>123</sup> While there are valid reasons for having stronger penalties for involving children such as the age, mental capacity, and possibility for trauma on the child, stronger penalties for trafficking adults could have more deterrent effect.

Increased usage of the statute is also another area for improvement. The statute is relatively new and was passed in 2007. Since the creation of this law, there has not been much case law

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<sup>120</sup> §14-43.11(a)(emphasis added).

<sup>121</sup> Shared Hope International, *Analysis and Recommendations North Carolina* (Jan. 23, 2012), available at [http://sharedhope.org/PICframe2/analysis/PIC\\_AR\\_2012\\_NC.pdf](http://sharedhope.org/PICframe2/analysis/PIC_AR_2012_NC.pdf).

<sup>122</sup> §14-43.11;

<sup>123</sup> §14-43.11.

developed on the issue. A search in legal databases yielded no appellate results related to this statute.<sup>124</sup> There are many valid reasons why the statute has not been widely used such as resources, the ability to charge crimes that do not involve an intent element, and the ability to charge crimes that have stronger penalties for adult victims. While these reasons exist, using this statute will continue to raise awareness about the issue and deter individuals from committing the specific practices outlined in the statute. In April, 2013, North Carolina may have its first high profile case relating to the statute. In 2009, Shayna Davis, a young five year old was allegedly sold by her mother into sexual servitude.<sup>125</sup> Her mother's trial is in April, 2013 and one of her charges is human trafficking under this NC statute.<sup>126</sup> As awareness rises and numbers increase, using this particular statute could deter perpetrators.

Currently, North Carolina Congress members and District Attorneys are working to strengthen the state's human trafficking laws. On February 20, 2013, state senators filed Senate Bill 122 which would require those convicted of forcing individuals under the age of 18 into sexual servitude.<sup>127</sup> The Bill would also require traffickers to wear GPS monitoring devices when released from jail.<sup>128</sup> Currently, a concurrent bill is planned to run in the State House of Representatives.<sup>129</sup> Increased action by legislators and those involved in the criminal justice system is helping to strengthen North Carolina's laws.

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<sup>124</sup> West Law Database Search, February 28, 2013.

<sup>125</sup> Sarah Netter, *Dad: Shaniya's Mom Trafficked Her to Settle Drug Debt*, WORLD NEWS (Nov. 20, 2009), <http://abcnews.go.com/WN/accused-shaniya-davis-kidnapper-charged-murder-rape/story?id=9136407>.

<sup>126</sup> Kelly Twedell, *Shaniya Davis Trial Delayed Until April*, FORT BRAGG PATCH (Feb. 7, 2013), <http://fortbragg.patch.com/articles/shaniya-davis-trial-delayed-until-april>.

<sup>127</sup> S. 122, 2012 Gen. Assemb., Reg. Sess. (N.C. 2012). Sponsors of the bill include Senators Thom Goolsby; Stan Bingham; E. S. (Buck) Newton; Austin M. Allran; Tom Apodaca; Chad Barefoot; Andrew C. Brock; Harry Brown; Bill Cook; David L. Curtis; Warren Daniel; Don Davis; Jim Davis; Kathy Harrington; Neal Hunt; Brent Jackson; Eleanor Kinnaird; Gene McLaurin; Wesley Meredith; Ronald J. Rabin; Shirley B. Randleman; Norman W. Sanderson; Dan Soucek; Jerry W. Tillman; Tommy Tucker; and Mike Woodard. *Id.*

<sup>128</sup> Kelly Corbett and Michelle Saxton, *supra* note 78.

<sup>129</sup> *Id.*

### III. JusticeMatters, Inc.: A Successful North Carolina Model

In addition to strong legislation, adequate services and provisions for victims are essential in combatting modern day slavery. In North Carolina, non-profits and coalitions are rising up to add and support victims. JusticeMatters is one particular non-profit that is using its legal expertise and community partnerships to aid survivors. JusticeMatters is legal services non-profit based in Durham, North Carolina. They are a Christian based organization that “provides empowering legal services to our low-income neighbors, mobilizing legal professionals and law students to invest their resources in our community for the common good.”<sup>130</sup> Founded in 2009, JusticeMatters works to provide direct representation and education in civil and humanitarian immigration matters, and for survivors of human trafficking.<sup>131</sup> They work in collaboration with churches, organizations, agencies throughout the Triangle region providing a holistic approach.<sup>132</sup>

As a relatively new organization, JusticeMatters has stepped right in the midst of anti-trafficking work in North Carolina. They are currently working with other North Carolina organizations such as the Salvation Army and WorldRelief.<sup>133</sup> As a part of their collaboration efforts, JusticeMatters is consulted on legal matters and issues related to trafficking.<sup>134</sup> As part of their individual work, JusticeMatters has worked in preparing and applying for civil immigration remedies for remedies.<sup>135</sup> Recognizing and understanding the complex system of immigration law, JusticeMatters is developing a strong team of attorneys and law students to assist and recognize the best paths for victims of human trafficking.

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<sup>130</sup> JUSTICEMATTERS, <http://justicemattersnc.org/> (last visited Mar. 2, 2013).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Interview with Libby Coles, Executive Director, 1/11/13

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

JusticeMatters has taken great strides in anti-trafficking efforts by providing a holistic approach for victims of trafficking. Many trafficking organizations can only focus on one aspect of trafficking such as advocacy or services for victims. There are many reasons for this from budget restrictions to time constraints. JusticeMatters works in all arenas. They provide education for victims, advocate and educate the public by speaking on panels and at conference, they provide direct representation through legal aid and consulting, and they provide services for victims through their organizational partnerships.<sup>136</sup> They ensure that victims have the legal remedies and tools while also making sure that victims have the services they need.<sup>137</sup> This holistic representation gets at the root of human trafficking in North Carolina and the world. It raises awareness in the public area, educates those affected, and ensures adequate legal protection for all of those involved. JusticeMatters truly provides valuable representation and support in the anti-human trafficking movement.

#### **IV. Conclusion: Legislation as an Important Step in Ending Modern Day Slavery**

Human trafficking has become a global industry, affecting and changing the lives of 27 million people on a daily basis. As the international community becomes more knowledgeable about this issue, strict and thorough legislation must be adopted to ensure that victims are protected and perpetrators are deterred. North Carolina legislators have taken the first step in creating legislation that creates clear definitions, strict penalties, and ensures protections for all victims. While there is room for improvement in the North Carolina statute, with stronger penalties for adult victims, the intent required for the crime of human trafficking, the legislation is useful tool in preventing human trafficking. Moreover, other states and nations could look to

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<sup>136</sup> JUSTICEMATTERS, *supra* note 129.

<sup>137</sup> *Id.*

the strict penalties and victim services as models for their own legislation. Outside of criminal justice system, non-profits in North Carolina are using the legislation and federal resources to provide holistic support for victims of human trafficking. In particular, JusticeMatters serves a model for a holistic approach to aiding victims. Working through local partnerships to provide legal remedies, aftercare assistance, and continued mental and emotional support, JusticeMatters is a North Carolina non-profit that is truly helping in the movement to end modern day slavery. Modern day slavery can be eradicated in this generation and legislation that provides real penalties, strong prevention tools, and true support victims is one way to achieve this goal.

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